

16 C.J.S. Constitutional Law § 6

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Constitutional Law

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PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

I. Definitions; Nature and Authority of Constitutions

B. Nature and Authority of Constitutions

1. In General

§ 6. Declaration and protection of fundamental rights

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  501

A constitution serves to declare and protect the practical, fundamental rights of the people.

A constitution serves to protect the people against arbitrary power.¹ The basic purposes of a written constitution are to secure to people certain unchangeable rights and remedies and to curtail unrestricted governmental activity within defined fields.²

The guarantees provided by the federal and state constitutions apply equally to all and cannot be denied to any one person without weakening the rights of all.³ Indeed, a constitution is not primarily designed to protect majorities who are usually able to protect themselves but to preserve and protect the rights of individuals and minorities against the arbitrary actions of those in authority.⁴ It is thus a function of constitutions to declare and protect fundamental rights.⁵

A constitution is intended to preserve practical and substantial rights, not to maintain theories.⁶ A constitution is, therefore, concerned with practical, substantial rights, not with those that are unclear and gain hold by subtle and involved reasoning.⁷

Constitutional rights cannot be created by statutes or rules,⁸ nor can they be abrogated by executive or judicial action.⁹ Further, the absence of an enabling statute cannot be construed to nullify rights provided by a constitution if those rights are sufficiently specific.¹⁰

Effect of failure to exercise power.

The failure to exercise a power expressly granted by a constitution does not destroy that power.¹¹

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Footnotes

- 1 Ohio—*State ex rel. Bruestle v. Rich*, 159 Ohio St. 13, 50 Ohio Op. 6, 110 N.E.2d 778 (1953).
- 2 Del.—*DuPont v. DuPont*, 32 Del. Ch. 413, 85 A.2d 724 (1951).
- 3 Ariz.—*Gusick v. Boies*, 72 Ariz. 309, 234 P.2d 430 (1951).
- 4 Fla.—*Peavy-Wilson Lumber Co. v. Brevard County*, 159 Fla. 311, 31 So. 2d 483, 172 A.L.R. 168 (1947).
- 5 U.S.—*Davis v. Passman*, 442 U.S. 228, 99 S. Ct. 2264, 60 L. Ed. 2d 846 (1979).
Prevention of experimentation with fundamental rights
U.S.—*Truax v. Corrigan*, 257 U.S. 312, 42 S. Ct. 124, 66 L. Ed. 254, 27 A.L.R. 375 (1921).
- 6 U.S.—*City of El Paso v. Simmons*, 379 U.S. 497, 85 S. Ct. 577, 13 L. Ed. 2d 446 (1965).
- 7 U.S.—*Federal Housing Administration v. Darlington, Inc.*, 358 U.S. 84, 79 S. Ct. 141, 3 L. Ed. 2d 132 (1958).
- 8 U.S.—*Clark v. Board of Ed. of Little Rock School Dist.*, 374 F.2d 569 (8th Cir. 1967).
- 9 U.S.—*Clark v. Board of Ed. of Little Rock School Dist.*, 374 F.2d 569 (8th Cir. 1967).
- 10 Vt.—*Shields v. Gerhart*, 163 Vt. 219, 658 A.2d 924 (1995).
- 11 Md.—*Johnson v. Duke*, 180 Md. 434, 24 A.2d 304 (1942).